



STATE OF WASHINGTON  
ENERGY FACILITY SITE EVALUATION COUNCIL

PO Box 43172 • Olympia, Washington 98504-3172

August 27, 1997

Ms. Cindy Davis  
Office of the Governor  
PO Box 40002  
Olympia, Washington 98504-0002

Subject: Executive Order 97-02

Dear Ms. Davis:

Enclosed are the hard copies of the Energy Facility Site Evaluation Council's plan for reviewing its rules pursuant to Executive Order 97-02. As suggested at the August 13 Workshop, the electronic copies have been sent directly to Mr. Doug Mah via e-mail. Copies have been posted on the Council's Internet site and sent to those on the rules review mailing list.

Sincerely,

Jason Zeller  
EFSEC Manager

JZ/jk  
Q-L2-68

Enclosures

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ENERGY FACILITY SITE EVALUATION COUNCIL  
*PO Box 43172 • Olympia, Washington 98504-3172*

**Energy Facility Site Evaluation Council  
Plan for Rules Review Under Executive Order 97-02**

**Introduction**

The Energy Facility Site Evaluation Council (EFSEC) is established in chapter 80.50 RCW to act on applications for the construction and operation of major non-hydroelectric energy facilities and to monitor and enforce compliance of certified energy facilities.

Through a three-phase statutory review process, the Council decides whether to recommend approval or rejection of applications to the governor. EFSEC was created to reduce duplication in the certification process, which would arise if an applicant were required to obtain multiple permits from multiple agencies and local jurisdictions. The Council must consider any state laws, local ordinances, rules, or regulations which would be applicable in the absence of EFSEC's "one-stop-siting" procedure.

The Council also has the authority to issue air and water discharge permits (Prevent Significant Deterioration (PSD) and National Pollution Discharge Elimination System (NPDES) permits respectively), using federal Clean Water Act and Clean Air Act criteria, as modified by Washington State Department of Ecology regulations.

The Council has nineteen chapters in its WAC. Of these, nine are specifically procedural (elaborating the Council's administrative process for its three phase review); three incorporate state and federal standards for air, water, and dangerous wastes; one contains the Council's required SEPA rules; and the remaining six describe items primarily related to internal agency management. The Council has very few significant legislative rules.

**Schedule**

EFSEC's schedule for review of its rules is contained in **Attachment A**. The Council has no policy or interpretive statements and uses no business forms. Review is not required in these areas.

New applications received by the Council may require changes in this tentative schedule.

Generally, the review is scheduled in four phases to accommodate the requirements of Council business and staff resources as follows:

<b>Completion Date</b>	<b>Comments</b>
12/97	The Council will use the expedited amendment process to update those rules which require administrative changes only.
12/98	The Council will complete its review of those rules from its list <sup>1</sup> which will not affect the processing of new applications.
06/99	The Council will complete its review of remaining rules from the list which do not involve the Council's SEPA process.  PROVIDED THAT, if feasible, the Council will not review rules that pertain to the processing of applications for certification while it is engaged in an adjudication. (The 06/99 deadline was set to place the rule review outside the Council's current adjudication. It may be delayed, depending on how the current adjudication proceeds.)
12/99	The Council will complete review of suggested rules which involve the interrelationships among the Council's SEPA process, the Council's adjudicative proceedings, and the application process. The Council will coordinate closely with the Department of Ecology during the review.
Ongoing	The Council will annually review its water, air, and dangerous waste rules for consistency with federal and state law, and state regulation, specifically NPDES, PSD, dangerous waste standards, and changes in state Growth Management or SEPA legislation. The Council will regularly invite constituencies to suggest rules for review.

### **Public Participation**

The Council strongly encourages public participation at every stage in the review process.

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<sup>1</sup> The Council developed a list of rules which either had a significant effect on business, labor, consumers, and the environment, or had raised concerns in recent Council proceedings.

Development of the review plan. From the beginning, the Council has sought to involve its stakeholders and the public in the development of the plan for rules review.

- *Mailing list.* The Council has developed a mailing list of persons interested in the Council's rule review.

Notice was sent to the Council's Minutes & Agendas list<sup>2</sup> about the pending rules review, and people were invited to be placed on a Rules Review mailing list to receive periodic updates and notices of opportunities for participation. The same notice was posted on the Council's Internet site to reach members of the general public. Interested parties may be added to the list at any time.

The Council will continue to use this list during its review process.

- *Council communication with interested parties.* Through timely updates of its Internet site and mailings to its list of interested parties, the Council continues to provide information about the progress of the review and notice of future opportunities for involvement.
- *Opportunities for comment.* The Council continues to provide a range of opportunities for public comment. Parties have been encouraged to contact the Council's review coordinator by mail, phone, or e-mail. The e-mail address of the review coordinator is linked to the Council's Rules Review page on its Internet site.

The Council's regularly scheduled monthly meetings in July and August were used to provide opportunities for oral comment on the draft list of rules to review, the draft schedule for the completion of the review of each rule, and methods for determining whether the rule meets the criteria in the Executive Order.

Throughout the review process, comments received will be made available for public inspection, both on the Internet and at the Council's office.

Rules Review. As the review proceeds, the Council will continue to use its mailing list, Internet site, and regularly scheduled monthly meetings to communicate with parties and inform them of opportunities for comment. The Council will tie its review of each rule to the APA procedures for rulemaking. The review of each rule will begin with the filing of a statement of intent (CR 101) to solicit public participation in the review of each rule. If, through this process, a rule is found to merit amendment or repeal, the Council will proceed with APA procedures, which ensure that public input is seriously considered. The Council may create focus groups of key stakeholders to assist it in amending certain rules.

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<sup>2</sup> The Council's Minutes & Agendas list is the Council's most comprehensive mailing list. It includes approximately one hundred individuals and entities, including all key stakeholders, members of state agencies, local governments, businesses (including recent project proponents), labor, and environmental groups who have expressed interest in being apprised of Council activities. Annually, people on the Minutes & Agendas list will be given the opportunity to be added to the rules review mailing list.

## **Review Methodology**

The Council's staff, who has considerable experience with the implementation of Council's rules, will conduct the review, with public participation encouraged at each stage of the process.

As indicated on the attached schedule, portions of the review will be organized by specific chapters of the WAC and other portions by groups of interrelated sections from various chapters. At the beginning of the review of a particular chapter or related sections, the Council will issue a CR 101 and receive initial comments. Assisted by these comments, the staff will review the chapter or related sections using the criteria in the Executive Order.

The Council does not anticipate using a quantitative process to determine whether a particular rule meets the criteria in the order. Rather, the staff will encourage open discussion of all points of view and will consider these perspectives in light of its past experiences implementing the rules. The results of the staff review will be made available for public comment. The Council will consider the staff review and the comments received to determine whether amendment or repeal is advised.

Clarity is one of the criteria in the Executive Order. Council staff members will receive training in clear rule writing before existing rules are amended or new rules are adopted.

## **Resources for Legislative Changes**

The Council anticipates that its rules review, including any amendments to significant legislative rules, can be accomplished with its present staff, using its regularly scheduled monthly meetings to receive public comment. It does not anticipate that resources beyond its present staffing and budget will be required.

## **Exceptions**

The Council identified a draft list of the rules to be reviewed. Per the Executive Order, rules were chosen either because (i) they have a significant effect on business, labor, consumers, and the environment, or (ii) they have raised concerns in recent Council proceedings. Through mailings and posting on the Internet, the Council encouraged broad participation in the development of the list. Two of the Council's regularly scheduled monthly meetings were designated to receive suggestions on the list. All the rules that meet the order's criteria will be reviewed; therefore, the Council does not require any exceptions to the regulatory review requirements.

## Process for Ongoing Review

Expedited amendment. During the first quarter of the year, staff will identify rules which require administrative updates, and, as appropriate, the Council will proceed with the expedited amendment process.

Water, Air, and Dangerous Wastes. After each legislative session, staff will identify whether Council rules require amendment to remain consistent with federal and state legislation and regulation. If inconsistencies are found, the Council will proceed with the expedited amendment process.

GMA, SEPA, chapter 80.50 RCW, and other relevant state legislation. After each legislative session, staff will identify whether Council rules require amendment to remain consistent with these statutes. If inconsistencies are found, the Council will proceed with the expedited amendment process or rule making as appropriate.

Council, stakeholder or public concerns. The Council's rules coordinator will note any concerns about the Council's rules, expressed directly or indirectly in any Council forum. These concerns will be documented as to the nature of the concern, the relevant rules, and the party expressing concern and kept on file. During the first quarter of the year, staff will report these concerns to the Council, and the Council will decide whether to conduct a rules review under the guidelines of this plan.

Agency	WAC Chapters or Document	Section numbers or other unique identifier	Chapter title	Document type I=interpretive R=rule O=other	Statutory authority	Estimated review completion date	Business report required
Energy Facility Site Evaluation Council	463-42	463-42-655 to 463-42-690	Procedure-Guidelines-Applications for Site Certification	R	RCW 80.50.040(1)	12/98	N
Energy Facility Site Evaluation Council	463-54	463-54-080	Certification Compliance Determination and Enforcement	R	RCW 80.50.040(1)	12/98	N
Energy Facility Site Evaluation Council	463-36	463-36-100	Procedure-amending or Terminating a Site Certification Agreement	R	RCW 80.50.040(1)	12/98	N
Energy Facility Site Evaluation Council	463-54	463-54-070	Certification Compliance Determination and Enforcement	R	RCW 80.50.040(1)	12/98	N
Energy Facility Site Evaluation Council	463-30	463-30-250 463-30-310	Procedure--Adjudicative Proceedings	R	RCW 80.50.040(1) RCW 34.05.250	06/99	N
Energy Facility Site Evaluation Council	463-14	463-14-050 463-14-080	Policy and Interpretation	R	RCW 80.50.040(1) RCW 80.50.120	06/99	N
Energy Facility Site Evaluation Council	463-30	463-30-400	Procedure-Adjudicative Proceedings	R	RCW 80.50.040(1) RCW 34.05.250	06/99	N

Agency	WAC Chapters or Document	Section numbers or other unique identifier	Chapter title	Document type I=interpretive R=rule O=other	Statutory authority	Estimated review completion date	Business Report Required
Energy Facility Site Evaluation Council	463-42	463-42-010 to 463-42-690	Procedure-Guidelines-Applications for Site Certification	R	RCW 80.50.040(1)	12/99	N
Energy Facility Site Evaluation Council	463-47	463-47-010 to 463-47-190	SEPA Rules	R	RCW 80.50.040(1) RCW 80.50.180 RCW 43.21C.120	12/99	N
Energy Facility Site Evaluation Council	463-14	463-14-080	Policy and Interpretation	R	RCW 80.50.040(1)	12/99	N
Energy Facility Site Evaluation Council	463-30	463-30-010 to 463-30-420	Procedure--Adjudicative Proceedings	R	RCW 80.50.040(1)	12/99	N